

AFTER ACTION AGENDA

REGULAR CITY COMMISSION MEETING MONDAY, JULY 2, 2012 6:30 P.M.

**DELTONA COMMISSION CHAMBERS
2345 PROVIDENCE BLVD.
DELTONA, FLORIDA**



AGENDA

1. **CALL TO ORDER**
2. **ROLL CALL - CITY CLERK**
3. **INVOCATION AND PLEDGE TO THE FLAG:**
 - A. **Invocation Presented by Commissioner Carmolingo – Pastor John Reynolds with the Home Place, Volusia County Baptist Church.**
4. **APPROVAL OF MINUTES & AGENDA:**
 - A. **Minutes:**

Regular City Commission Meeting – June 18, 2012.

The Commission voted unanimously to approve the minutes of the Regular City Commission Meeting of June 18, 2012 as presented.
 - B. **Additions or Deletions to Agenda.**
5. **PRESENTATIONS/AWARDS/REPORTS:**
 - A. **Proclamation – Parks & Recreation Month – July 2012.**
 - B. **Presentation to Volusia County Sheriff Deputy Cody Cochran.**

**6. PUBLIC FORUM – Citizen comments for any items.
(4 minute maximum length)**

CONSENT All items marked with an * will be considered by one motion unless removed
AGENDA: from the Consent Agenda by a member of the City Commission.

7. CONSENT AGENDA:

*** A. Request for approval of Award of Bid #PW 12-10, Dewberry Drive and Irondale Street Drainage Improvements.**

This swale area, located on Dewberry Drive, is in need of improvements to better handle the stormwater runoff in that area. Under certain conditions of heavy rains and major storm events, standing water for several days is prevalent in front of the homes in this area. In addition, minor flooding of the street occurs subject to the storm severity. The Stormwater Division has received numerous complaints from residents when this occurs. This project will provide much needed stormwater relief with the construction of these drainage improvements.

The construction within this project includes the demolition and removal of the existing concrete, asphalt, storm structures, storm pipes and vegetation along the stormwater and water main routes. The installation of 520 linear feet of 19" x 30" Elliptical Concrete stormwater pipe, 680 linear feet of 10" perforated PVC under drain, 1,400 linear feet of 6" PVC / DIP water mains, six stormwater inlets and the replacement of all water services, including reconnection to meters and relocation of meter boxes.

The Public Works Division solicited bids for the Dewberry Drive / Irondale Street Drainage Improvements project. The bid was solicited on demandstar and went out to 775 Contractors and Suppliers. There were 42 planholders for this bid and 3 responsive bids were received as follows:

- 1. Hazen Construction, LLC \$169,895.00*
- 2. Sun Road, Inc. \$183,866.20.00*
- 3. McMahan Construction, Inc. \$209,200.00*

The low bidder, Hazen Construction, LLC has the required license for this project which was verified through the Department of Business and Professional Regulation.

After discussion, the Commission voted unanimously to approve award of Bid #PW12-10 for the Dewberry Drive / Irondale Street Drainage Improvements project to Hazen Construction, LLC at a total cost of \$169,895.00.

*** B. Request for approval of Award of Bid #PW12-11, Kraft / Bluefield Area Stormwater Improvements.**

The large drainage retention area bordering Kraft Drive and Bluefield Avenue floods and adversely affects several roadways and properties when the retention area reaches its peak level during major storm events. This project will provide a solution that minimizes the risk of severe flooding in the area. This will be done by enlarging the retention area and providing additional storage volume.

The construction within this project includes the clearing and grubbing of 3.6 acres of natural, undeveloped property, and the excavation, removal and disposal of 18,000 cubic yards of soil in the 3.6 acre area. Finish grading and stabilization of the disturbed area will be completed along with transplanting approximately 7,320 plugs taken from wetland areas within the project vicinity to newly created wetland areas within the 3.6 acre area.

The Public Works Division solicited bids for the Kraft / Bluefield Area Stormwater Improvements project. The bid was solicited on Demandstar and went out to 717 Contractors and Suppliers. There were 38 planholders for this bid and 4 responsive bids were received as follows:

- 1. Barracuda Building Corporation \$92,728.00*
- 2. Valencia Construction Group \$112,000.00*
- 3. Wal-Rose, Inc. \$200,166.00*
- 4. Crossroads Site Development \$279,657.00*

The low bidder, Barracuda Building Corporation, has the required license for this project which was verified through the Department of Business and Professional Regulation.

After discussion, the Commission voted unanimously to approve award of Bid #PW12-11 for the Kraft / Bluefield Drainage Area Stormwater Improvements project to Barracuda Building Corporation at a total cost of \$92,728.00.

8. ORDINANCES AND -PUBLIC HEARINGS:

A. Ordinance No. 15-2012, Amending and revising Chapter 50, Solid Waste, at first reading, and to schedule second and final reading for July 16, 2012.

Staff has determined that there is a need to revise procedures related to solid waste due to terms and conditions in the new contract. The size of the containers that will be provided by the waste contractor has increased resulting in a change. Additionally, due to citizen complaints staff is recommending a change on placement and storage of the cans.

The proposed ordinance is provided in a strike-out, underscore format and is intended to formally amend and revise sections of Chapter 50.

After discussion, the Commission voted 6 to 1 (with Commissioner Zischkau voting against the motion) to adopt Ordinance No. 15-2012 to revise Sections 50-3, 50-4 and 50-28, of Chapter 50, Solid Waste of the City's Code of Ordinances at first reading, and to schedule second and final reading for July 16, 2012.

B. Public Hearing – Final Site Plan Application (FSP 12-002) for RaceTrac retail facility.

A conceptual site plan application for a RaceTrac gas station and convenience store was administratively approved, with conditions, by the Development Review Committee (DRC) on November 17, 2011. The Final Site Plan application for the project was conditionally approved by the DRC on May 30, 2012. The applications are for the development of a 22-pump gas station and convenience store that is ±5,928 square feet of gross floor area located on a ±2.32 acre site.

These application approvals were predicated on the creation of a legally recorded lot by the Deltona Village applicant, to substantially conform to the provisions of the approved Deltona Village Developer Agreement and Overall Development Plan/Master Development Plan (ODP/MDP). The parcel proposed by RaceTrac and conditionally approved by the DRC would meet such conformance criteria. As a result, staff finds that the Final Site Plan application also meets the provisions of the City's Comprehensive Plan and Land Development Code.

The review approval of the of the Final Site Plan at this time does not grant development rights to the RaceTrac applicant until the Deltona Village Final Plat is reviewed and approved by the City Commission, is recorded at the Volusia County Clerk of the Courts, and a Final Plat Development Order is issued to the Deltona Village applicant. With the establishment of the legal lot of record within the overall Deltona Village master development, the RaceTrac applicant will be able to receive a Final Site Plan Development Order that grants development rights to be able to construct the project.

After discussion, the Commission voted unanimously to approve the RaceTrac Final Site Plan (FSP 12-002); with the condition that the Development Order for FSP 12-002 is only issued after the underlying Final Plat for the Deltona Village Business Planned Unit Development is approved and recorded that creates the legal lot of record for the RaceTrac site.

9. OLD BUSINESS:

A. Discussion re: Ethics and Civility Pledge.

At the workshop on June 11, 2012, it was the consensus of the Commission that a Pledge of Civility should be prepared for the Commission, appointed officials, and high level employees. This pledge would reaffirm the stringent ethics requirements that already exist under the Code of Ethics for Public Officers and Employees in the Florida Statutes.

After discussion, the Commission voted unanimously to approve the Ethics and Civility Pledge as presented.

B. Discussion re: Dare Ware Settlement Agreement.

On March 17, 1997, the City Commission of Deltona adopted an Adult Entertainment Code. That code stated that an adult entertainment business that was operating in Deltona at the time that the code was adopted could remain open until October 1, 2002, at which time it was to "cease operations". For well over nine (9) years (after October 1, 2002) the City took no action to enforce the code requirement that that business (Dare Wear) cease operations. The issue of the continued operation of Dare Wear was recently raised by the City Commission, and a notice of code violation was served on Dare Wear on February 14, 2012. [It should be noted that the owner of Dare Wear also owns a lingerie store next to Dare Wear called Hot Looks of Florida. It has been determined that Hot Looks of Florida is not currently an adult entertainment business as defined in the Deltona City Code.] The owner of Dare Wear hired an attorney, Jonathan D. Kaney III. The City Attorney negotiated with Mr. Kaney regarding a possible settlement of the dispute between the City of Deltona and Dare Wear, and recommends the following:

A settlement agreement would be prepared that would provide:

a) The City would drop/dismiss its code enforcement proceeding against Dare Wear in return for the following representations and agreements by Dare Wear.

b) Dare Wear would not expand its business from its current configuration, location, and size, and not expand into the current location of Hot Looks of Florida.

c) Dare Wear would have removed, within sixty (60) days of the signing of the settlement agreement, the billboard currently located on I-4 facing east (north) just before the Saxon exit, which is within the city limits of Deltona.

d) Dare Wear would not in the future put up any billboard within the city limits of Deltona.

e) Neither Dare Wear nor Hot Looks of Florida will change their names as listed on the awnings on the front of their locations. Currently those signs say "Dare Wear" and "Hot Looks of Florida".

f) Dare Wear will configure the inside of its store (or maintain the configuration if it already complies with the standard) so that when its door is open, a person will not be able to view merchandise in the store until after that person has cleared the screening process set forth hereinafter.

g) Dare Wear will at all times screen customers who come into Dare Wear by requesting proof of age to ensure that only persons of legal age are allowed admittance.

h) Dare Wear will keep its front window and door opaquely covered so that it is not possible to view the interior of the store from the outside of the store.

i) Dare Wear will continue to display a notice on its door that only adults may enter the store.

If a settlement of this matter does not occur, the violation will be specially set for a Special Master hearing. If the Special Master finds a violation, the attorney for Dare Wear has indicated that court litigation would be likely. Such litigation would be very expensive and the City Attorney cannot predict its final outcome.

At the request of the City Attorney, this item was tabled (no time certain).

10. NEW BUSINESS:

A. Selection of Voting Delegate to the 86th Annual Florida League of Cities Conference.

The Florida League of Cities' Annual Conference will be held at the Westin Diplomat in Hollywood, Florida on August 23 - 25, 2012. This year's theme is FLC University; A Commitment to Life Long Learning. The League is asking each City to designate one person to be the voting delegate. Policy development, election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each City will make decisions that determine the direction of the League.

After discussion, the Commission voted unanimously to select Commissioner Carmolingo as the City's voting delegate to the 86th Annual Conference of the Florida League of Cities.

B. Request for consideration of request from Gloria Beaux for reduction of fine from \$5,000.00 assessed pursuant to Special Magistrate Case DEL-07-132.

An order Imposing Fine/Lien was entered on November 28, 2007, by the City of Deltona Special Magistrate, ordering Gloria Beaux to pay to the City of Deltona a fine in the amount of one hundred dollars (\$100.00) per day beginning November 28, 2007, for each and every day the violations exist and continues to exist or until a maximum amount of \$5,000.00 is reached. The violation occurred when the respondent failed to repair holes, breaks, loose and rotting materials and properly surface the walls to prevent deterioration to the property located at 1113 Algoma Street. The respondent failed to come into compliance for 54 days. The total accumulated amount due is \$5,000.00. On February 27, 2008 the respondent's representative Mitchell Green appeared before the Special Magistrate to request a recommendation to reduce the fine.

At the request of the City Manager, this item was tabled (no time certain).

C. Request for approval of Resolution No. 2012-09, Opting out of the statewide on-site sewage treatment and disposal systems evaluation program.

During the November 1, 2010 meeting, the Commission directed the City Attorney to prepare a resolution asking the Legislative Delegation to seek repeal of those portions of SB 550 which mandate septic system pumping and inspection every five (5) years. Resolution No. 2012-04 accomplished this purpose.

At the February 20, 2012 meeting, the Commission requested the City Attorney stay on top of this issue as they are required to adopt a Resolution to opt-out by January 1, 2013.

After discussion, the Commission voted unanimously to approve Resolution No. 2012-09, opting out of the statewide on-site sewage treatment and disposal systems evaluation program.

D. Request for approval of Resolution No. 2012-20, Acquisition of properties through eminent domain for the Normandy Section B Roadway Improvements Project.

These three (3) vacant properties are needed to provide the required stormwater treatment facilities for the Normandy Section B roadway improvements. Those improvements consist of converting the existing 2 lane roadway into three (3) lanes, including a closed drainage system, upgrading the existing utilities, and constructing bicycle lanes. The purpose of the enhancement is to connect Fort Smith Boulevard with the existing 3 laned Normandy Boulevard at the Saxon intersection.

The three properties were appraised at:

1721 Normandy Blvd. (37,000 sq. ft. with 210 ft. of lake frontage) \$33,000

1939 E. Normandy Blvd. (43,000 sq. ft. with 180 ft. of lake frontage) \$39,000

1919 E. Normandy Blvd. (40,000 sq. ft. with 230 ft. of lake frontage) \$37,000

Offers were made to the owners at the appraised value, but those offers were rejected. One sticking point was that in the recent past, the properties were appraised for taxes in the neighborhood of \$100,000 each.

Negotiations with the owners took place. The owners of 1939 and 1919 E. Normandy Boulevard agreed to accept \$50,000 each for their parcels. The owner of 1721 Normandy Boulevard (who was represented by an attorney) agreed to accept \$56,000, plus statutory attorney's fee of \$7,590, plus the cost of a survey, already done by the owner, in the amount of \$600. It is the opinion of the City Attorney that the purchase of these properties at the prices negotiated would result in a lower total cost of acquisition as opposed to if the City were to take the properties by eminent domain. The actual "value" of each of these lots is uncertain. For instance, the 2011 tax value of the property that was assessed by the City's appraiser the lowest of the three (1721 Normandy) was \$40,784, which is \$7,784 over the value found in the City's appraisal. It is uncertain what a jury would find as a value for these large lakefront properties, and the City would be liable for the attorneys' fees, appraisal fees, and costs for both the City and each of the attorneys representing each of the property owners, on top of property values determined by a jury of 12.

Staff received a letter from counsel for the owner of 1721 Normandy explaining the factual basis for his offer to sell the property for \$56,000, plus statutory attorney's fees, plus \$600 for an already accomplished survey.

Without the acquisition of these three properties the roadway improvements cannot be done.

It is the recommendation of the City Attorney that the City purchase the three properties at the negotiated prices. If that is not acceptable to the City Commission, the eminent domain resolution should be passed. A total of \$250,000 has been budgeted for this acquisition.

If it is the consensus of the City Commission that the property should be purchased rather than taken by eminent domain, the purchases will be set for an advertised public hearing at the next meeting.

After discussion, the Commission voted unanimously to adopt Resolution 2012-20, authorizing the City Attorney to make written offers pursuant to Chapter 73, Florida Statutes, of up to \$56,000.00 for 1919 E. Normandy Boulevard and 1939 E. Normandy Boulevard, Deltona, Florida, and to

authorize the City Attorney to finalize the purchase of the property at 1721 Normandy Boulevard for the total of \$56,000.00 plus the statutory attorney's fees, the \$600.00 survey fee and to adopt Resolution No. 2012-20 that is needed for the Normandy Section B roadway improvements project.

11. CITY COMMISSION COMMENTS:

12. CITY ATTORNEY COMMENTS:

13. CITY MANAGER COMMENTS:

14. ADJOURNMENT:

NOTE: If any person decides to appeal any decision made by the City Commission with respect to any matter considered at this meeting or hearing, he/she will need a record of the proceedings, and for such purpose he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based (F.S. 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 878-8100.